

From: [Axe, Al](#)
To: [Barbara Nann/R6/USEPA/US@EPA](#)
Cc: ['Cermak, John F.'; 'Inglin, Sonja A.'](#)
Subject: RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")
Date: 01/22/2010 10:51 AM
Attachments: [Correspondence.pdf](#)

Barbara,

Attached is the correspondence from Lori Warner. I just got off the phone with Ms. Warner, who confirmed that the attached letter is also on behalf of Ms. McGinnes' two daughters, Tammy Kim McGinnes Idoux and Holly Dawn McGinnes Boate. Ms. Warner said that she would confirm this in writing. I will forward this to you as soon as I receive it.

That leaves only 2 heirs, one of whom (Tanya Gladfelter Ammons) has told us that she will not sign anything and one (Gary Gladfelter) who seems to be estranged from the family and noncommunicative. I described our proposed course of action relative to these two final heirs in the email I sent you yesterday. Please let us know if that will satisfy EPA.

We will also let you know if we receive any new information as a result of Ms. McGinnes' investigation into the property ownership issue that changes the current situation.

Please call if you have any questions. Al

Albert R. Axe, Jr.

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From: Nann.Barbara@epamail.epa.gov [mailto:Nann.Barbara@epamail.epa.gov]
Sent: Friday, January 22, 2010 10:14 AM
To: Axe, Al
Cc: 'Cermak, John F.'; 'Inglin, Sonja A.'
Subject: RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

Al,

I can't seem to locate the attached Lori Warner letter. Could you please resend me the letter?

Barbara A. Nann
Assistant Regional Counsel
EPA Region 6 (6RC-S)
1445 Ross Avenue
Dallas, TX 75202
phone: (214) 665-2157

fax: (214) 665-6460
nann.barbara@epa.gov

RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")



Axe, Al

to: Barbara Nann

01/21/2010 05:50 PM

Cc: "Cermak, John F.", "Inglin, Sonja A."

Barbara,

Earlier today, I received the attached correspondence from Lori Warner on behalf of Ms. McGinnes, the former wife of Lawrence McGinnes (deceased). As you will see, the letter essentially follows the same format as the letter received from the Port of Houston Authority in that it does not admit ownership of the Site, but says that Ms. McGinnes does not object to access to the Site by either the PRPs or the EPA for the purpose of doing the Work. You have previously informed us that the Port letter is acceptable to EPA for the purpose of compliance with the UAO access requirement. Is this letter acceptable as well?

It has been our understanding that Ms. Warner represents not only Ms. McGinnes, but also her two daughters. I am seeking clarification from Ms. Warner as to whether the letter was intended to be on behalf of all 3 of these heirs and will let you know as soon as I've heard back from her on this point.

With respect to the Gladfelters, we have sent both of them revised access agreements following the EPA format that you recommended. I believe we sent copies of these revised agreements to you. We have sent these by both certified mail and also hand delivery. Mr. Gladfelter was not at his home so the letter was left at his home in a secure place where he would see it.

We would like to visit with you tomorrow about the possibility of sending a copy of the attached letter to the remaining heirs under cover of a letter that informs the remaining heirs that we have obtained the attached letter from Ms. McGinnes and will assume that, if we have not heard back from them within a stated number of days (eg, 10 days), they agree with Ms. McGinnes' letter and do not object to our accessing the Site for the purposes of doing the work required by EPA. We will also note in the letter that we will assume that they do admit ownership of the property.

We will send these letters certified mail and will again try to personally deliver the letter to Mr. Gladfelter. We hope that you will agree on this approach so that we can move forward on the access issue.

We have been staying in contact with Mr. Roberts and, as you note, we believe that

he will eventually agree to allow us access to the Big Star property.

I also visited with an attorney with TxDOT today regarding access to install the fence and extend the access road to the Site. He expressed concern regarding the proposed location of the fence underneath I-10 but said that he would discuss with others at TxDOT and get back to us.

I believe you received a copy of the supplemental letter from the Port of Houston Authority yesterday. The Port has authorized access to construct the fence in the San Jacinto River just off the Big Star shoreline.

Please let us know if you have any questions. Al

Albert R. Axe, Jr.

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From: Nann.Barbara@epamail.epa.gov [mailto:Nann.Barbara@epamail.epa.gov]

Sent: Thursday, January 21, 2010 4:10 PM

To: Axe, Al

Cc: 'Cermak, John F.'; 'Inglin, Sonja A.'

Subject: RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

As a quick followup regarding access, I read your additional efforts regarding securing access. They are encouraging efforts with still more work to be done by the parties. To help facilitate your efforts, I will be making phone calls to the parties that you are trying to secure access for the RI/FS to encourage them to negotiate and sign with you an access agreement. Could you please provide me with Ms. Lori Warner of Adams & Reese? I have the phone numbers of Ms. Traci Ammons and will attempt to contact her. Have any attempts been made to go to the home of Mr. Gladfelter to secure access since he does not have a phone? I have spoken with Jay Roberts, president of Big Star. He assures me that he is willing to provide access and that he still needs to reach an acceptable access agreement with you prior to signature. He stated his attorney had comments to the access agreement that he was providing you shortly.

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RE: San Jacinto--Revised Administrative Settlement Agreement and
Order On Consent For Removal Action ("AOC")

Axe, Al to: Barbara Nann, 'Cermak, John F.'

01/21/2010 03:47 PM

Cc: "Inglin, Sonja A."

1:00 central works for me. Al

Albert R. Axe, Jr.

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From: Nann.Barbara@epamail.epa.gov [mailto:Nann.Barbara@epamail.epa.gov]

Sent: Thursday, January 21, 2010 3:21 PM

To: Cermak, John F.

Cc: Axe, Al; Inglin, Sonja A.

Subject: RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

That is fine.

Barbara A. Nann

Assistant Regional Counsel

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RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

Cermak, John F.

to: Barbara Nann

01/21/2010 03:18 PM

Cc: "Axe, Al", "Inglin, Sonja A."

1 PM Central?

From: Nann.Barbara@epamail.epa.gov [mailto:Nann.Barbara@epamail.epa.gov]
Sent: Thursday, January 21, 2010 1:17 PM
To: Cermak, John F.
Cc: Axe, Al; Inglin, Sonja A.
Subject: RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

We need to reschedule the call. Apparently, I am scheduled to have a call with Steve Ginski and March Smith along with the rest of the staff of EPA at 11 am.

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RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

Cermak, John F.

to: Barbara Nann

01/21/2010 02:47 PM

Cc: "Axe, Al", "Inglin, Sonja A."

Let's go ahead at 11 AM Central time. Thank you.

From: Nann.Barbara@epamail.epa.gov [mailto:Nann.Barbara@epamail.epa.gov]
Sent: Thursday, January 21, 2010 12:44 PM
To: Cermak, John F.
Cc: Axe, Al; Inglin, Sonja A.
Subject: RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

11 am central is also fine.

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RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

Cermak, John F.

to: Barbara Nann

01/20/2010 01:19 PM

Cc: "Axe, Al", "Inglin, Sonja A."

We could also have the call at 11 AM Central time. That would be better for us.

John

From: Nann.Barbara@epamail.epa.gov [mailto:Nann.Barbara@epamail.epa.gov]
Sent: Wednesday, January 20, 2010 11:10 AM
To: Cermak, John F.
Cc: Axe, Al; Inglin, Sonja A.
Subject: RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

As of this afternoon, I have spoken with some management. Are you, Sonja, and Al available on Friday to discuss some aspects of the AOC? Specifically, the facts section of the AOC. That is the section that had the most suggested edits. I have a 2 pm call so either something before or after.

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RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

Cermak, John F.

to: Barbara Nann

01/20/2010 01:01 PM

Cc: "Inglin, Sonja A.", "Axe, Al"

Thank you Barbara.

John

From: Nann.Barbara@epamail.epa.gov [mailto:Nann.Barbara@epamail.epa.gov]
Sent: Wednesday, January 20, 2010 9:32 AM
To: Axe, Al
Cc: Cermak, John F.; Inglin, Sonja A.
Subject: RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

John,

Sorry I did not get the email until today about your wish to have a conference call regarding any preliminary EPA feedback. My 10 am call turned out to be an all day affair and then have been away on vacation until today. At this point there is no preliminary feedback. I still need to meet with some of Region 6 management to discuss the issues before being able to comment at any of the proposed edits.

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RE: San Jacinto--Revised Administrative Settlement Agreement and
Order On Consent For Removal Action ("AOC")

Axe, Al to: 'Cermak, John F.', Barbara Nann

01/12/2010 10:35 AM

Cc: "Inglin, Sonja A."

Yes, I can participate at that time. Al

Albert R. Axe, Jr.

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From: Cermak, John F. [mailto:jcermak@bakerlaw.com]

Sent: Tuesday, January 12, 2010 10:00 AM

To: Nann.Barbara@epamail.epa.gov

Cc: Axe, Al; Inglin, Sonja A.

Subject: RE: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

Barbara:

I think it would be helpful for us to get at least preliminary feedback (with the understanding that EPA headquarters has the final say) so we can turn another draft and meet the deadline. What if we schedule a call late your day so you have a chance to review the revisions? How about 2 PM Pacific/4 PM Central time? Al, are you available? We can use the following call-in number 888-853-9376. Pass Code: 3104428885.

Thank you.

John

From: Nann.Barbara@epamail.epa.gov [mailto:Nann.Barbara@epamail.epa.gov]

Sent: Tuesday, January 12, 2010 6:26 AM

To: Cermak, John F.

Cc: aaxe@winstead.com; Inglin, Sonja A.

Subject: Re: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

We can have a call if you like. I cannot speak with any authority on the suggested changes since I will not have the time to fully review the document. I have already forwarded the marked up AOC to headquarters and Philip for review. My only initial comment (without having read the suggested changes) is that the site stabilization is a time-critical removal which requires an imminent and substantial endangerment finding. The confined facility being proposed is a non-time critical removal and a finding of imminent and substantial endangerment is not required. If you still want to talk, I am available anytime except 10 am central call.

Barbara A. Nann

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Re: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

Cermak, John F.

to: Barbara Nann

01/12/2010 07:46 AM

Cc: aaxe, "Inglin, Sonja A."

Thank you Barbara. Is there anyone we should speak to you in your absence? Also, should we have a call today to discuss the revisions to the AOC?

John

From: Nann.Barbara@epamail.epa.gov

To: Cermak, John F.

Cc: aaxe@winstead.com ; Inglin, Sonja A.

Sent: Tue Jan 12 04:45:48 2010

Subject: Re: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

Thank you for the AOC. There is no deadline for the submittal date for the marked up AOC. I just wanted to get the AOC before my vacation so that I could send the suggested changes to headquarters for review. That way when I get back I can sit down and review with headquarters what changes EPA can make to the AOC and get it back to you with plenty of time to review the changes EPA makes and give you enough time to review whether your client would like to sign the AOC. I have

been given by my management the deadline of the end of this month to negotiate an AOC for a site stabilization removal and I want to utilize all the time we have as productively as possible. My client is on a tight deadline and they are wedded to the idea of moving forward on site stabilization at the end of the month.

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San Jacinto--Revised Administrative Settlement Agreement and
Order On Consent For Removal Action ("AOC")

Cermak, John F.

to: Barbara Nann

01/11/2010 05:06 PM

Cc: aaxe, "Inglin, Sonja A."

Barbara:

Attached for your review is a proposed draft of an AOC that addresses time-critical site stabilization activities ("Draft Site Stabilization AOC") that we are submitting to you on behalf of both International Paper Company ("International Paper") and McGinnes Industrial Maintenance Corporation ("MIMC"). You also will be receiving a

draft scope of work.

We are providing this draft to you in response to the deadline you set in your email of last Thursday, in which you asked for the draft by today (rather than, as had previously been discussed and agreed upon, by January 20th and upon your return from your vacation). We have made a number of revisions today to incorporate changes that were suggested by Phil Allen to Sections VII and VIII. Some of the final changes (in particular, those with respect to the impact of access problems on deadlines for commencing work) that have not yet been reviewed or discussed in detail with Phil. These additional changes have not necessarily been reviewed and approved by International Paper or MIMC, but we will advise you tomorrow if there are any final changes that need to be made to incorporate and address those revisions. We understand that you will be out of the office on vacation beginning on January 13th. We are prepared to make ourselves available should there be any aspect of the Draft Site Stabilization AOC that you would like to discuss tomorrow, before you leave for vacation. To move forward, we will also need to have an opportunity to review the Action Memorandum and the Site Map that are to be attached as Appendix A and Appendix C, respectively, to the Site Stabilization AOC. Can you please advise as to timing for providing a draft of these documents to us?

We patterned the attached draft on the proposed AOC that you circulated on November 20th ("Draft AOC"), but also taking into account issues and concerns about the Draft AOC that were raised in our December 10th call regarding the Draft AOC.

We have proposed deadlines in the Site Stabilization AOC consistent with the scope of the activities it addresses (i.e., the stabilization of the northwest corner of the Tract and the installation of security fencing). With respect to activities under the second proposed AOC (addressing the design and construction of the confined disposal facility at the Site), different deadlines may be appropriate.

A redline showing changes from the Draft AOC is attached. Below is a brief summary of provisions of the Draft Site Stabilization AOC that are intended to assist you in your review of it. In reviewing the redline, please bear in mind that some of the text that has not been changed nonetheless shows up as revised text in green in the redline.

Findings of Fact and Conclusions of Law/Determinations (Sections IV and V, Paragraphs 9 - 18). The Draft AOC included all of the same findings of fact as the Unilateral Administrative Order ("UAO") for the Remedial Investigation/Feasibility Study ("RI/FS"). The UAO contained detailed Findings by EPA supportive of its action under §106 of CERCLA. For purposes of the Draft Site Stabilization AOC, we have pared down the findings of fact since an "imminent and substantial endangerment" is not required for the AOC, which represents a settlement between the Parties relative to work to be performed at the Site. We have also taken a similar approach with respect to the Conclusions of Law/Determinations.

Access to Information (Section X, Paragraphs 31-34). As discussed on December 10, 2009, we have deleted the requirement in Paragraph 58 of the Draft AOC requiring Respondents to maintain a detailed privilege log, given the burden and expense associated with doing so.

Record Retention (Section XI, Paragraphs 35-36). We have proposed to reduce the record retention period from ten (10) years to five (5) years.





Emergency Response and Notification of Releases (Section XIII, Paragraphs 38 -39).

We have clarified the language in Paragraph 65 of the Draft AOC to exclude from the notification requirement any ongoing release of which EPA is already aware and those releases that do not exceed the reportable quantities under CERCLA.

Payment of Response Costs (Section XV, Paragraphs 41-43).

For purposes of the Site Stabilization AOC, and consistent with our discussions during our call on December 10th, Respondents propose to pay EPA's response costs incurred after the Effective Date of the Draft Site Stabilization AOC in connection with the implementation of the work required by the AOC. We have retained use of the term "Future Response Costs" to describe the costs that Respondents would pay. The definitions of, and references to, "Past Response Costs" and "Interim Response Costs" have been deleted. In Paragraph 42(a), we have provided for a means by which Respondents can seek additional detail regarding response costs submitted to them for payment.

Stipulated Penalties (Section XVIII, Paragraphs 50-58). We have provided for stipulated penalties to apply in the case of late reports (and have revised the proposed penalty amounts) and for a "work takeover" penalty in the amount of \$15,000.

Respondents' Covenant Not to Sue (Section XXI, Paragraph 63). We have made changes to the scope of the covenant not to sue so that it is consistent with the scope of the claims being settled, and also preserves Respondents' rights to pursue other potentially responsible parties with respect to the Site.

Financial Assurances (Section XXVI, Paragraphs 72-75). We have proposed a financial assurance amount consistent with the expected scope and cost of the time-critical site stabilization activities.

Additional Removal Action. As discussed during our December 10, 2009 conference call, we have proposed the deletion of Section XXVII of the Draft AOC. This section is not required by EPA's model AOC and does not make sense in the context of the work that is agreed to be undertaken. It also is so open-ended that the Respondents would have no reasonable means of understanding the obligations that are being imposed upon them.

Notice Provision (Section XXIX, Paragraph 80). We have added a notice provision to supplement the provisions of the Draft AOC regarding notice.

As noted above, we are available to discuss any questions that you may have regarding the attached draft.

Regards.

John

[My Bio](#) | [Web site](#) | [V-card](#)

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Baker Hostetler
Counsel to Market Leaders

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